

Cynthia Z. Levin, Esq. (SBN 27050)
 Law Offices of Todd M. Friedman, P.C.
 1150 First Avenue, Suite 501
 King of Prussia, PA 19406
 Phone: 888-595-9111 ext 618
 Fax: 866 633-0228
 clevin@attorneysforconsumers.com
 Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF PENNSYLVANIA**

KEITH HOBBS, individually and on
 behalf of all others similarly situated,

Plaintiff,

vs.

MEDICAL GUARDIAN LLC; and
 DOES 1 through 10, inclusive,

Defendant.

) Case No.

) **CLASS ACTION**

) **COMPLAINT FOR VIOLATIONS
 OF:**

1. NEGLIGENCE VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
3. NEGLIGENCE VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]

) **DEMAND FOR JURY TRIAL**

Plaintiff KEITH HOBBS (“Plaintiff”), individually and on behalf of all
 others similarly situated, alleges the following upon information and belief based
 upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others

1 similarly situated seeking damages and any other available legal or equitable
2 remedies resulting from the illegal actions of Defendant, MEDICAL GUARDIAN
3 LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff
4 on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
5 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
6 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
9 a Georgia resident, seeks relief on behalf of a Class, which will result in at least
10 one class member belonging to a different state than that of Defendant, a
11 Pennsylvania company. Plaintiff also seeks up to \$1,500.00 in damages for each
12 call in violation of the TCPA, which, when aggregated among a proposed class in
13 the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
14 Therefore, both diversity jurisdiction and the damages threshold under the Class
15 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

16 3. Venue is proper in the United States District Court for the Eastern
17 District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(1) because Defendant
18 resides in this District.

19 **PARTIES**

20 4. Plaintiff, KEITH HOBBS (“Plaintiff”), is a natural person, and is a
21 “person” as defined by 47 U.S.C. § 153 (39).

22 5. Defendant, MEDICAL GUARDIAN LLC (“Defendant”), is an entity
23 in the business of giving medical alerts, and is a “person” as defined by 47 U.S.C.
24 § 153 (39).

25 6. The above named Defendant, and its subsidiaries and agents, are
26 collectively referred to as “Defendants.” The true names and capacities of the
27 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
28 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible
2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
3 Complaint to reflect the true names and capacities of the DOE Defendants when
4 such identities become known.

5 7. Plaintiff is informed and believes that at all relevant times, each and
6 every Defendant was acting as an agent and/or employee of each of the other
7 Defendants and was acting within the course and scope of said agency and/or
8 employment with the full knowledge and consent of each of the other Defendants.
9 Plaintiff is informed and believes that each of the acts and/or omissions complained
10 of herein was made known to, and ratified by, each of the other Defendants.

11 **FACTUAL ALLEGATIONS**

12 8. Beginning on or about June 13, 2017 and continuing through on or
13 about July 20, 2017, Defendant contacted Plaintiff on Plaintiff's cellular telephone
14 number ending in -7558 in an attempt to solicit Plaintiff to purchase Defendant's
15 services or products.

16 9. Defendant used an "automatic telephone dialing system" as defined
17 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

18 10. Defendant contacted or attempted to contact Plaintiff from telephone
19 numbers belonging to Defendant, including without limitation (561) 220-9418.

20 11. Defendant's calls constituted calls that were not for emergency
21 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

22 12. Defendant's calls were placed to a telephone number assigned to a
23 cellular telephone service for which Plaintiff incurs a charge for incoming calls
24 pursuant to 47 U.S.C. § 227(b)(1).

25 13. During all relevant times, Defendant did not possess Plaintiff's "prior
26 express consent" to receive calls using an automatic telephone dialing system or an
27 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
28 227(b)(1)(A).

1 14. Furthermore, Plaintiff's cellular telephone number ending in -7558
2 has been on the National Do-Not-Call Registry since at least on or about March 23,
3 2017, or in any case, well over thirty (30) days prior to Defendant's initial calls.

4 15. Defendant placed multiple calls soliciting its business to Plaintiff on
5 its cellular telephones beginning in or around June of 2017 and continued until in
6 or around July of 2017.

7 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
8 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

9 17. Plaintiff received numerous solicitation calls from Defendant within a
10 12-month period.

11 18. Plaintiff requested for Defendant to stop calling Plaintiff during one
12 of the initial calls from Defendant, thus revoking any prior express consent that had
13 existed and terminating any established business relationship that had existed, as
14 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

15 19. Despite this, Defendant continued to call Plaintiff in an attempt to
16 solicit its services and in violation of the National Do-Not-Call provisions of the
17 TCPA.

18 20. Upon information and belief, and based on Plaintiff's experiences of
19 being called by Defendant after requesting they stop calling, and at all relevant
20 times, Defendant failed to establish and implement reasonable practices and
21 procedures to effectively prevent telephone solicitations in violation of the
22 regulations prescribed under 47 U.S.C. § 227(c)(5).

23 **CLASS ALLEGATIONS**

24 21. Plaintiff brings this action individually and on behalf of all others
25 similarly situated, as a member the four proposed classes (hereafter, jointly, "The
26 Classes"). The class concerning the ATDS claim for no prior express consent
27 (hereafter "The ATDS Class") is defined as follows:
28

1 All persons within the United States who received any
2 solicitation/telemarketing telephone calls from
3 Defendant to said person's cellular telephone made
4 through the use of any automatic telephone dialing
5 system or an artificial or prerecorded voice and such
6 person had not previously consented to receiving such
7 calls within the four years prior to the filing of this
8 Complaint

9 22. The class concerning the ATDS claim for revocation of consent, to the
10 extent prior consent existed (hereafter "The ATDS Revocation Class") is defined
11 as follows:

12 All persons within the United States who received any
13 solicitation/telemarketing telephone calls from
14 Defendant to said person's cellular telephone made
15 through the use of any automatic telephone dialing
16 system or an artificial or prerecorded voice and such
17 person had revoked any prior express consent to receive
18 such calls prior to the calls within the four years prior to
19 the filing of this Complaint.

20 23. The class concerning the National Do-Not-Call violation (hereafter
21 "The DNC Class") is defined as follows:

22 All persons within the United States registered on the
23 National Do-Not-Call Registry for at least 30 days, who
24 had not granted Defendant prior express consent nor had
25 a prior established business relationship, who received
26 more than one call made by or on behalf of Defendant
27 that promoted Defendant's products or services, within
28 any twelve-month period, within four years prior to the
filing of the complaint.

24. The class concerning the National Do-Not-Call violation following
revocation of consent and prior business relationship, to the extent they existed
(hereafter "The DNC Revocation Class") is defined as follows:

1 All persons within the United States registered on the
2 National Do-Not-Call Registry for at least 30 days, who
3 received more than one call made by or on behalf of
4 Defendant that promoted Defendant's products or
5 services, after having revoked consent and any prior
6 established business relationship, within any twelve-
month period, within four years prior to the filing of the
complaint.

7
8 25. Plaintiff represents, and is a member of, The ATDS Class, consisting
9 of all persons within the United States who received any solicitation telephone calls
10 from Defendant to said person's cellular telephone made through the use of any
11 automatic telephone dialing system or an artificial or prerecorded voice and such
12 person had not previously not provided their cellular telephone number to
13 Defendant within the four years prior to the filing of this Complaint.

14 26. Plaintiff represents, and is a member of, The ATDS Revocation Class,
15 consisting of all persons within the United States who received any
16 solicitation/telemarketing telephone calls from Defendant to said person's cellular
17 telephone made through the use of any automatic telephone dialing system or an
18 artificial or prerecorded voice and such person had revoked any prior express
19 consent to receive such calls prior to the calls within the four years prior to the
20 filing of this Complaint.

21 27. Plaintiff represents, and is a member of, The DNC Class, consisting
22 of all persons within the United States registered on the National Do-Not-Call
23 Registry for at least 30 days, who had not granted Defendant prior express consent
24 nor had a prior established business relationship, who received more than one call
25 made by or on behalf of Defendant that promoted Defendant's products or services,
26 within any twelve-month period, within four years prior to the filing of the
27 complaint.

28 28. Plaintiff represents, and is a member of, The DNC Revocation Class,

1 consisting of all persons within the United States registered on the National Do-
2 Not-Call Registry for at least 30 days, who received more than one call made by or
3 on behalf of Defendant that promoted Defendant's products or services, after
4 having revoked consent and any prior established business relationship, within any
5 twelve-month period, within four years prior to the filing of the complaint.

6 29. Defendant, their employees and agents are excluded from The
7 Classes. Plaintiff does not know the number of members in The Classes, but
8 believes the Classes members number in the thousands, if not more. Thus, this
9 matter should be certified as a Class Action to assist in the expeditious litigation of
10 the matter.

11 30. The Classes are so numerous that the individual joinder of all of its
12 members is impractical. While the exact number and identities of The Classes
13 members are unknown to Plaintiff at this time and can only be ascertained through
14 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
15 The Classes includes thousands of members. Plaintiff alleges that The Classes
16 members may be ascertained by the records maintained by Defendant.

17 31. Plaintiff and members of The ATDS Class and The ATDS Revocation
18 Class were harmed by the acts of Defendant in at least the following ways:
19 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
20 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
21 members to incur certain charges or reduced telephone time for which Plaintiff and
22 ATDS Class and ATDS Revocation Class members had previously paid by having
23 to retrieve or administer messages left by Defendant during those illegal calls, and
24 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
25 members.

26 32. Common questions of fact and law exist as to all members of The
27 ATDS Class which predominate over any questions affecting only individual
28 members of The ATDS Class. These common legal and factual questions, which

do not vary between ATDS Class members, and which may be determined without reference to the individual circumstances of any ATDS Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a ATDS Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the ATDS Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

33. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

34. Common questions of fact and law exist as to all members of The ATDS Revocation Class which predominate over any questions affecting only individual members of The ATDS Revocation Class. These common legal and factual questions, which do not vary between ATDS Revocation Class members, and which may be determined without reference to the individual circumstances of any ATDS Revocation Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with

1 the prior express consent of the called party) to an ATDS
2 Revocation Class member, who had revoked any prior express
3 consent to be called using an ATDS, using any automatic
4 telephone dialing system or any artificial or prerecorded voice
5 to any telephone number assigned to a cellular telephone
6 service;

7 b. Whether Plaintiff and the ATDS Revocation Class members
8 were damaged thereby, and the extent of damages for such
9 violation; and

10 c. Whether Defendant and their agents should be enjoined from
11 engaging in such conduct in the future.

12 35. As a person that received numerous telemarketing/solicitation calls
13 from Defendant using an automatic telephone dialing system or an artificial or
14 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
15 is asserting claims that are typical of The ATDS Revocation Class.

16 36. Plaintiff and members of The DNC Class and DNC Revocation Class
17 were harmed by the acts of Defendant in at least the following ways: Defendant
18 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
19 via their telephones for solicitation purposes, thereby invading the privacy of said
20 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
21 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
22 and DNC Revocation Class members were damaged thereby.

23 37. Common questions of fact and law exist as to all members of The
24 DNC Class which predominate over any questions affecting only individual
25 members of The DNC Class. These common legal and factual questions, which do
26 not vary between DNC Class members, and which may be determined without
27 reference to the individual circumstances of any DNC Class members, include, but
28 are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had not granted prior express consent to Defendant and did not have an established business relationship with Defendant;
- b. Whether Defendant obtained prior express written consent to place solicitation calls to Plaintiff or the DNC Class members' telephones;
- c. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and
- d. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

38. As a person that received numerous solicitation calls from Defendant within a 12-month period, who had not granted Defendant prior express consent and did not have an established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Class.

39. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Revocation Class. These common legal and factual questions, which do not vary between DNC Revocation Class members, and which may be determined without reference to the individual circumstances of any DNC Revocation Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry

1 and who had revoked any prior express consent and any
2 established business relationship with Defendant;

3 b. Whether Plaintiff and the DNC Class member were damaged
4 thereby, and the extent of damages for such violation; and

5 c. Whether Defendant and their agents should be enjoined from
6 engaging in such conduct in the future.

7 40. As a person that received numerous solicitation calls from Defendant
8 within a 12-month period, who, to the extent one existed, had revoked any prior
9 express consent and any established business relationship with Defendant, Plaintiff
10 is asserting claims that are typical of the DNC Revocation Class.

11 41. Plaintiff will fairly and adequately protect the interests of the members
12 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
13 class actions.

14 42. A class action is superior to other available methods of fair and
15 efficient adjudication of this controversy, since individual litigation of the claims
16 of all Classes members is impracticable. Even if every Classes member could
17 afford individual litigation, the court system could not. It would be unduly
18 burdensome to the courts in which individual litigation of numerous issues would
19 proceed. Individualized litigation would also present the potential for varying,
20 inconsistent, or contradictory judgments and would magnify the delay and expense
21 to all parties and to the court system resulting from multiple trials of the same
22 complex factual issues. By contrast, the conduct of this action as a class action
23 presents fewer management difficulties, conserves the resources of the parties and
24 of the court system, and protects the rights of each Classes member.

25 43. The prosecution of separate actions by individual Classes members
26 would create a risk of adjudications with respect to them that would, as a practical
27 matter, be dispositive of the interests of the other Classes members not parties to
28 such adjudications or that would substantially impair or impede the ability of such

1 non-party Class members to protect their interests.

2 44. Defendant have acted or refused to act in respects generally applicable
3 to The Classes, thereby making appropriate final and injunctive relief with regard
4 to the members of the Classes as a whole.

5 **FIRST CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227(b).**

8 **On Behalf of the ATDS Class and ATDS Revocation Class**

9 45. Plaintiff repeats and incorporates by reference into this cause of action
10 the allegations set forth above at Paragraphs 1-44.

11 46. The foregoing acts and omissions of Defendant constitute numerous
12 and multiple negligent violations of the TCPA, including but not limited to each
13 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
14 *47 U.S.C. § 227 (b)(1)(A)*.

15 47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
16 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
17 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

18 48. Plaintiff and the ATDS Class and ATDS Revocation Class members
19 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

20 ///

21
22 **SECOND CAUSE OF ACTION**

23 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
24 **Act**

25 **47 U.S.C. §227(b)**

26 **On Behalf of the ATDS Class and the ATDS Revocation Class**

27 49. Plaintiff repeats and incorporates by reference into this cause of action
28 the allegations set forth above at Paragraphs 1-44.

1 50. The foregoing acts and omissions of Defendant constitute numerous
2 and multiple knowing and/or willful violations of the TCPA, including but not
3 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
4 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

5 51. As a result of Defendant's knowing and/or willful violations of *47*
6 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class
7 members are entitled an award of \$1,500.00 in statutory damages, for each and
8 every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

9 52. Plaintiff and the Class members are also entitled to and seek injunctive
10 relief prohibiting such conduct in the future.

11 **THIRD CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227(c)**

14 **On Behalf of the DNC Class and the DNC Revocation Class**

15 53. Plaintiff repeats and incorporates by reference into this cause of action
16 the allegations set forth above at Paragraphs 1-44.

17 54. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
20 *47 U.S.C. § 227 (c)(5)*.

21 55. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
22 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an
23 award of \$500.00 in statutory damages, for each and every violation, pursuant to
24 *47 U.S.C. § 227(c)(5)(B)*.

25 56. Plaintiff and the DNC Class and DNC Revocation Class members are
26 also entitled to and seek injunctive relief prohibiting such conduct in the future.

27 **FOURTH CAUSE OF ACTION**

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

57. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

58. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

59. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

60. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

61. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury on all issues so triable.

Respectfully Submitted this 1st Day of December, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Cynthia Z. Levin, Esq.
Cynthia Z. Levin, Esq.
Law Offices of Todd M. Friedman
Attorney for Plaintiff